

Chapter 48. LICENSURE AND REGULATION OF TATTOOING AND BODY-PIERCING ESTABLISHMENTS
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LICENSURE AND REGULATION OF TATTOOING AND BODY-PIERCING ESTABLISHMENTS

Chapter Compiler's Comments:

Effective Date: Section 21, Ch. 386, L. 2005, provided that this chapter is effective January 1, 2006.

Part 1. General Provisions

Part 1

General Provisions

50-48-101. (Effective January 1, 2006) Purpose. The regulation of tattooing and body-piercing establishments is required to protect the public health and safety.

History: En. Sec. 1, Ch. 386, L. 2005.

50-48-102. (Effective January 1, 2006) Definitions. As used in this chapter, unless the context clearly indicates otherwise, the following definitions apply:

(1) "Body piercing" means penetrating the skin to make a hole, mark, or scar that is generally permanent in nature.

(2) "Department" means the department of public health and human services provided for in 2-15-2201.

(3) "Establishment" means either a body-piercing operation, a tattooing operation, or a combination of both operations in a multiple-type establishment.

(4) "Local board of health" means a county, city, city-county, or district board of health provided for in Title 50, chapter 2.

(5) "Local health officer" has the meaning provided in 50-2-101.

(6) "Multiple-type establishment" means an operation encompassing both body piercing and tattooing on the same premises and under the same management.

(7) "Person" means an individual, partnership, corporation, association, or other entity engaged in the business of operating, owning, or offering the services of body piercing or tattooing.

(8) "Regulatory authority" means the department of public health and human services, the local board of health, the local health officer, or the local sanitarian.

(9) (a) "Tattooing" means making permanent marks on the skin of a live human being by puncturing the skin and inserting indelible colors. The term includes imparting permanent makeup on the skin such as permanent lip coloring and permanent eyeliner.

(b) The term does not include:

(i) the practice of electrolysis as defined in 37-31-101; or

(ii) the use by a physician or medical professional who is licensed to practice in the state of Montana of colors, dyes, or pigments for the purpose of obscuring scar tissue or imparting color to the skin for cosmetic, medical, or figurative purposes.

History: En. Sec. 2, Ch. 386, L. 2005.

50-48-103. (Effective January 1, 2006) Rulemaking authority. The department shall adopt and enforce minimum safety and sanitation requirements for tattooing and body piercing, including rules to:

(1) set standards to ensure sanitation and safety in establishments to protect the public health and safety;

(2) license establishments;

(3) provide procedures for enforcement of the laws and rules relating to establishments, including implementing plans of correction;

(4) impose fees for licensure, inspection, enforcement, training, and administration.

History: En. Sec. 3, Ch. 386, L. 2005.

50-48-104 and 50-48-105 reserved.

50-48-106. (Effective January 1, 2006) Injunctions. A regulatory authority may bring an action for an injunction against any continued violation of this

chapter or any rule adopted under 50-48-103 or 50-48-203.

History: En. Sec. 5, Ch. 386, L. 2005.

50-48-107. (Effective January 1, 2006) County attorney to prosecute violations. When a regulatory authority furnishes evidence to the county attorney of a county in this state where the violating establishment operates, the county attorney shall prosecute any person violating this chapter or any rule adopted under 50-48-103 or 50-48-203.

History: En. Sec. 6, Ch. 386, L. 2005.

50-48-108. (Effective January 1, 2006) Penalties -- misdemeanor. A person who purposefully or knowingly violates any provision of this chapter or rules adopted under 50-48-103 or 50-48-203 is guilty of a misdemeanor. Upon conviction, the person shall be fined:

- (1) an amount of not less than \$50 or more than \$100 for the first offense;
- (2) an amount of not less than \$75 or more than \$200 for the second offense; and
- (3) an amount of not less than \$200 and imprisoned in the county jail for not more than 90 days for the third and subsequent offenses.

History: En. Sec. 7, Ch. 386, L. 2005.

50-48-109. (Effective January 1, 2006) Civil penalties -- injunctions not barred. (1) An establishment that violates this chapter or rules adopted under 50-48-103 or 50-48-203 is subject to a civil penalty not to exceed \$500 for each violation.

(2) An action to impose civil penalties under this section does not bar actions for injunctions to enforce compliance with this chapter or to enforce compliance with a rule adopted under 50-48-103 or 50-48-203.

History: En. Sec. 8, Ch. 386, L. 2005.

50-48-110. (Effective January 1, 2006) Costs and expenses -- recovery by regulatory authority. In a civil action initiated by the regulatory authority under 50-48-106 or 50-48-109, the court may, by petition of the regulatory authority, order an establishment that is found to be in willful violation of this chapter or a rule adopted under 50-48-103 or 50-48-203 to pay the costs of investigations and any other expenses incurred. These costs are limited to the direct costs of investigations and other expenses.

History: En. Sec. 9, Ch. 386, L. 2005.

Part 2. Licensing

Part 2

Licensing

50-48-201. (Effective January 1, 2006) License required -- fees -- application. (1) A person operating an establishment shall procure an annual license from the appropriate regulatory authority having jurisdiction. For each annual license, the regulatory authority shall collect a fee established by rule pursuant to 50-48-103 or 50-48-203.

(2) A separate license is required for each establishment operating on different premises.

(3) A person operating a multiple-type establishment shall procure separate licenses for body piercing and tattooing businesses.

(4) An application for a license must be made to the department on forms containing the information required by the department.

(5) Licenses are not transferable.

History: En. Sec. 10, Ch. 386, L. 2005.

50-48-202. (Effective January 1, 2006) Late fee -- allocation of licensure and late fees. (1) A person operating an establishment who fails to renew a license issued by the department by the expiration date and who operates the establishment in the license year for which an annual renewal fee was not paid shall, upon renewal, pay to the department a late renewal fee of \$25 in addition to the annual fee required by 50-48-201. Payment of the late renewal fee does not relieve the operator of responsibility for operating without a license.

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(2) The department shall deposit the fees collected under 50-48-201 and subsection (1) of this section in the state special revenue account provided for in 50-48-209.

History: En. Sec. 11, Ch. 386, L. 2005.

50-48-203. (Effective January 1, 2006) Licensure and regulation by local boards of health. (1) A local board of health may implement its own licensure and regulatory program for tattooing and body-piercing establishments independent of that of the department. A local board of health's licensure and regulatory program must be operated in lieu of the department's licensure and regulatory program.

(2) Subject to the restrictions in 50-2-130, a local board of health that operates its own licensure and regulatory program pursuant to subsection (1) may adopt necessary regulations that are not less stringent than department rules adopted under 50-48-103. The rules may include:

(a) standards to ensure sanitation and safety in establishments to protect public health and safety;

(b) licensure of establishments;

(c) procedures for enforcement of the laws and rules relating to establishments, including the implementation of plans of correction; and

(d) fees that reflect and may not exceed the actual costs incurred for licensure, inspection, enforcement, training, and administration.

(3) The local board of health shall report annually to the department on the number of establishments that it licenses and regulates.

History: En. Sec. 4, Ch. 386, L. 2005.

50-48-204. (Effective January 1, 2006) Denial or cancellation of license by regulatory authority -- multiple-type establishments. (1) The regulatory authority may deny or cancel a license it issues if it finds, after proper investigation, that the applicant or licensee is not in compliance with this chapter or a rule adopted under 50-48-103 or 50-48-203 and the applicant or licensee has failed or refused to remedy or correct the noncompliance or violation.

(2) When a multiple-type establishment is licensed, the denial or cancellation may affect both tattooing and body-piercing operations or only one of the operations, as determined by the regulatory authority.

History: En. Sec. 12, Ch. 386, L. 2005.

50-48-205. (Effective January 1, 2006) Notice and hearing required for license denial or cancellation. (1) A license may not be denied or canceled by the regulatory authority without delivery to the applicant or licensee of a written statement of the grounds for denial or cancellation and an opportunity for a hearing before the regulatory authority to show cause, if any, why the license should not be denied or canceled.

(2) The applicant or licensee shall make a written request to the department for a hearing within 10 days after notice of the grounds for denial or cancellation has been received.

(3) The hearing conducted by the department must be held in accordance with the contested case procedures of the Montana Administrative Procedure Act.

History: En. Sec. 13, Ch. 386, L. 2005.

50-48-206. (Effective January 1, 2006) Health officers to make investigations and inspections -- free access. (1) State and local health officers or their designees shall conduct investigations and inspections of establishments.

(2) State and local health officers or their designees must be provided access to establishments at all reasonable hours for the purpose of conducting investigations and inspections as required under subsection (1).

(3) If a local board of health inspection and regulatory program is being operated in lieu of a department program, the local board of health and not the department has the duty and authority provided in this section.

History: En. Sec. 14, Ch. 386, L. 2005.

50-48-207 and 50-48-208 reserved.

50-48-209. (Effective January 1, 2006) State special revenue account. There

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is an account in the state special revenue fund. Money in the account is allocated to the department to be used to administer the provisions of this chapter and the rules adopted under 50-48-103.

History: En. Sec. 15, Ch. 386, L. 2005.